



**Before the  
State of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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In the Matter of a 1994 Chevrolet Corvette, VIN  
1G1YY32P0R5115830, Purchased by Lawrence  
Kelly.

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Case No.: 97-H-1034

**FINAL DECISION**

Lawrence Kelly applied to the Department of Transportation for a title and registration for a 1994 Chevrolet Corvette. By letter dated February 4, 1997, the Department refused to issue a title or registration to him. By letter dated April 18, 1997, Mr. Kelly requested a hearing to review the Department's decision.

Pursuant to due notice a hearing was held on June 9, 1997, in Madison, Wisconsin, before Mark J. Kaiser, Administrative Law Judge.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the parties to this proceeding are certified as follows:

Lawrence J. Kelly, by  
Attorney Kristin J. Sederholm  
Krekeler & Scheffer, S.C.  
PO Box 828  
Madison, WI 53701-0828

Wisconsin Department of Transportation, by  
Attorney Charles M. Kernats  
Office of General Counsel  
PO Box 7910  
Madison, WI 53707-7910

The Administrative Law Judge issued a proposed decision on July 2, 1997. No comments on the proposed decision were received. The proposed decision is adopted as the final decision in this matter.

### Findings of Fact

The Administrator finds:

### Proposed Findings of Fact

1. On October 7, 1995, Lawrence Kelly contracted to purchase a 1994 Chevrolet Corvette, VIN 1G1YY32P0R5115830, from Capitol Corvette. Pursuant to the purchase contract, Mr. Kelly paid \$30,611.50 including tax, license and title fees for the 1994 Chevrolet Corvette. Lawrence Kelly took possession of the Corvette and retained possession of the vehicle as of the date of the hearing in this matter.
2. In October, 1995, Capitol Corvette was a motor vehicle dealer conducting business at 5400 King James Way, Madison, Wisconsin, 53719. Capitol Corvette was in the business of selling used motor vehicles. Capitol Corvette was a sole proprietorship and held motor vehicle dealer license number 1047. David C. Larson was the owner and sole proprietor of Capitol Corvette. On December 9, 1996, the Division of Hearings and Appeals issued an order revoking Capitol Corvette's motor vehicle dealer license (Docket Nos. 96-H-986 and 96-H-993).
3. The Division of Motor Vehicles of the Department of Transportation (DMV) is part of an agency of the State of Wisconsin and is authorized under sec. 218.01, Stats., to license, inspect, and regulate motor vehicle dealers in Wisconsin. DMV also has the authority under chapters 341 and 342, Stats., to issue titles and registration for motor vehicles in Wisconsin.
4. The 1994 Chevrolet Corvette purchased by Lawrence Kelly was owned by Linda Lou Peterson and Mark C. Kwetkowski. Ms. Peterson and Mr. Kwetkowski had entered into a consignment agreement with Capitol Corvette to sell the vehicle. Capitol Corvette failed to pay Ms. Peterson and Mr. Kwetkowski the purchase price for this vehicle, in violation of the terms of the consignment agreement.
5. Lawrence Kelly applied to the DMV for Wisconsin title and registration for the subject vehicle. Because of conflicting ownership claims, the DMV refused to issue a title or registration to Lawrence Kelly.
6. When Lawrence Kelly purchased the subject vehicle from Capitol Corvette, he was not aware that it was owned by Linda Lou Peterson and Mark C. Kwetkowski or that the Corvette was sold on consignment by Capitol Corvette for Ms. Peterson and Mr. Kwetkowski. Lawrence Kelly purchased the Corvette at Capitol Corvette's business premises, and he believed that Capitol Corvette owned this vehicle and had the authority to sell it. Capitol

Corvette did not inform Mr. Kelly that the Corvette was owned by Ms. Peterson and Mr. Kwetkowski.

7. Lawrence Kelly has never worked for an automobile dealer, nor has he worked in the automotive industry. Prior to this transaction, Lawrence Kelly had not had any financial dealings with Capitol Corvette or David Larson.
8. Lawrence Kelly purchased the subject motor vehicle in good faith and without knowledge that the sale was in violation of the ownership rights of Linda Lou Peterson and Mark C. Kwetkowski. Lawrence Kelly is a buyer in the ordinary course of business of the subject motor vehicle

### Discussion

Lawrence Kelly has applied to the DMV for a certificate of title and registration for the subject motor vehicle. Pursuant to secs. 342.11(1) and 342.12(2), Stats., the DMV refused to issue a title or registration to Mr. Kelly for the subject motor vehicle.<sup>1</sup>

The Wisconsin motor vehicle code is silent with respect to issuance of a title and registration in this situation. The transaction is regulated by the Uniform Commercial code. Pursuant to the sec. 402.403(2), Stats., "[a]ny entrusting of possession of goods to a merchant who deals in goods of that kind gives the merchant power to transfer all rights of the entruster to a buyer in ordinary course of business." In the instant matter, Linda Lou Peterson and Mark C. Kwetkowski entrusted the subject motor vehicle to Capitol Corvette for the purpose of selling the vehicle. Accordingly, Capitol Corvette had the power to transfer ownership of the vehicle to a buyer.

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<sup>1</sup> Sec. 342.11(1), Stats., provides in relevant part:

The department shall refuse issuance of a certificate of title . . . for any of the following reasons:

- (1) The department has reasonable grounds to believe that
  - (a) The person alleged to be the owner of the vehicle is not the owner.
  - (b) The application contains a false or fraudulent statement.

Sec. 342 12(2), Stats., provides in relevant part:

- (2) If the department is not satisfied as to the ownership of the vehicle or that there are no undisclosed security interests in it, the department, subject to sub. (3), shall either:
  - (a) Withhold issuance of a certificate of title until the applicant presents documents reasonable sufficient to satisfy the department as to the applicant's ownership of the vehicle and that there are no undisclosed security interests in it, or
  - (b) Issue a distinctive certificate of title pursuant to sec 342 10(4) or 342 283.

Capitol Corvette has authority to transfer interest in the vehicle even if the consignor has retained title. In general, the interests of a consignor are not protected unless the consignor complies with one of the three alternatives set forth at sec. 402.326(3), Stats., relating to informing prospective creditors of the consignee of a potential security interest.<sup>2</sup> Linda Lou Peterson and Mark C. Kwetkowski have not alleged that they complied with the provisions of sec. 402.326(3), Stats.

Lawrence Kelly purchased the vehicle from Capitol Corvette. He was unaware that Capitol Corvette was selling the vehicle on consignment. Even if Mr. Kelly had been aware that the vehicle was being sold on consignment, there is no evidence that he should have suspected that Capitol Corvette did not intend to use the proceeds of this sale to pay the consignor or the sale was fraudulent in any manner.

Mr. Kelly has the burden to prove that he is a buyer in the ordinary course of business. The phrase "buyer in the ordinary course of business" is defined at sec. 402.201(9), Stats. Sec. 401.201(9), Stats., provides in relevant part that: "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to the person is in violation of the ownership rights or security interest of a 3rd party in the goods buys in ordinary course from a person in the business of selling goods of that kind . . .'. Based on the evidence in the record, it appears that Lawrence Kelly is a good faith purchaser who purchased the vehicle without knowledge that the sale was in violation of the ownership rights of Linda Lou Peterson and Mark C. Kwetkowski. Lawrence Kelly purchased the vehicle from Capitol Corvette, a licensed motor vehicle dealer, which at the time of the purchase was a company in the business of selling used motor vehicle.

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<sup>2</sup> Sec 402.326(3), Stats., provides in relevant part.

(3) Where goods are delivered to a person for sale and such person maintains a place of business at which the person deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. This subsection is applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum." However, this subsection is not applicable if the person making delivery:

- (a) Complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign; or
- (b) Establishes that the person conducting the business is generally known by that person's creditors to be substantially engaged in selling the goods of others; or
- (c) Complies with the filing provisions of ch 409

Conclusions of Law

The Administrator concludes:

1. Pursuant to sec. 402.403(2), Stats., Capitol Corvette had the power to transfer all of Linda Lou Peterson and Mark C. Kwetkowski's ownership rights in the subject motor vehicle to a buyer in the ordinary course of business.
2. Lawrence Kelly is a buyer in the ordinary course of business of the subject motor vehicle. Pursuant to sec. 402.403, Stats., Lawrence Kelly has acquired title and ownership of the subject motor vehicle.
3. Pursuant to secs. 346.26 and 227.43(1)(bg), Stats., the Division of Hearings and Appeals has the authority to issue the following order.

Order

The Administrator orders:

The Division of Motor Vehicles of the Department of Transportation shall issue a motor vehicle title and registration to Lawrence Kelly for the 1994 Chevrolet Corvette, VIN 1G1YY32P0R5115830, which is the subject of this matter.

Dated at Madison, Wisconsin on July 24, 1997.

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By: \_\_\_\_\_

David H. Schwarz  
Administrator